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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 JASON LATRELL THOMAS,

12 Plaintiff,

13 v.

14 G. MARSHALL, et al.,

15 Defendants.
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Case No. 2:22-cv-05446-CAS-SHK

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

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18 The Court has reviewed the Complaint, the Motion to Dismiss (“MTD”)
19 filed by Defendants G. Marshall (“Marshall”), J. Villa (“Villa”), G. Ortega
20 (“Ortega”), D. Olmos (“Olmos”), E. Solano (“Selano”), T. Koufos (“Koufos”), P.
21 Delatorre (“Delatorre”), E. Escajeda (“Escajeda”), X. Marquez (“Marquez”), O.
22 Diaz (“Diaz”), D. Reyes (“Reyes”), B. Thibault (“Thibault”), D. Barbour
23 (“Barbour”), Ms. Hall (“Hall”), A. Galaviz (“Galaviz”), Warden Debbie Asuncion
24 (“Asuncion”), and the California Department of Corrections and Rehabilitation
25 (“CDCR”) (collectively, “Defendants”), the relevant records on file, and the Report
26 and Recommendation of the United States Magistrate Judge. No objections have
27 been filed. The Court accepts the findings and recommendation of the Magistrate
28 Judge.

1 IT IS THEREFORE ORDERED that Defendants' MTD is GRANTED in
2 part and DENIED in part. Specifically, the Court ORDERS that the MTD be:

- 3 (1) GRANTED insofar as Defendants seek dismissal of Plaintiff's claims
4 against Defendants Thibault and Barbour as untimely and therefore,
5 Defendants Thibault and Barboare DISMISSED from this case with
6 prejudice;
- 7 (2) DENIED insofar as Defendants seek dismissal of Plaintiff's claims
8 against any other Defendants besides Defendants Thibault and
9 Barbour as untimely;
- 10 (3) GRANTED insofar as Defendants seek dismissal of Defendant
11 CDCR, and therefore, Defendant CDCR is DISMISSED from this
12 case with prejudice;
- 13 (4) GRANTED insofar as Defendants seek dismissal of the claims against
14 Defendants Diaz, and Asuncion, and the claims against these
15 Defendants are DISMISSED without prejudice and with leave to
16 amend;
- 17 (5) DENIED insofar as Defendants seek dismissal of Plaintiff's Eighth
18 Amendment failure to protect claim against Defendants Ortega,
19 Escajeda, Delatorre, and Reyes, but GRANTED as to the remaining
20 claims against Ortega, Escajeda, Delatorre, and Reyes, and therefore,
21 those claims are DISMISSED without prejudice and with leave to
22 amend;
- 23 (6) GRANTED insofar as Defendants seek dismissal of Plaintiff's Eighth
24 Amendment claims against Marquez and therefore, those claims are
25 DISMISSED without prejudice and with leave to amend but DENIED
26 insofar as Defendants seek dismissal of Plaintiff's First Amendment
27 retaliation and conspiracy claims against Marquez; and

1 (7) DENIED insofar as Defendants seek dismissal of Plaintiff's
2 conspiracy claim against Villa, but GRANTED insofar as Defendants
3 seek dismissal of all other claims against Villa and therefore, those
4 claims are DISMISSED without prejudice and with leave to amend.

5 If Plaintiff wishes to continue litigating the claims that the Court dismissed
6 without prejudice and with leave to amend, as identified above, Plaintiff may file a
7 First Amended Complaint ("FAC") within twenty-one (21) days of this Order
8 issuing, therein fixing the deficiencies consistent with the Court's Order. If
9 Plaintiff decides to file a FAC, Plaintiff must still re-plead the claims that were not
10 dismissed if Plaintiff seeks to continue litigating those claims. If Plaintiff does not
11 raise a claim in the FAC, the Court will consider it waived. Alternatively, Plaintiff
12 may stand on the remaining claims against the remaining Defendants.

13 Dated: April 7, 2025

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15 HONORABLE CHRISTINA A. SNYDER
16 United States District Judge
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